IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 32 of 2001

WITH

COMPANY PETITION No 35 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREENATHJI BUILDWELL PVT. LTD

Versus

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Appearance:

1. COMPANY PETITION Nos. 32, 35 of 2001

MR HARSHIT S TOLIA for Petitioners.

MR JITENDRA MALKAN for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 03/03/2005

COMMON ORAL JUDGEMENT

The petitioners have filed these two petitions for Amalgamation of the Transferor Company with the Transferee Company and for seeking sanction of this Court to the Scheme of Amalgamation as per Annexure C to each of these two petitions.

2. It is the case of the petitioners that the Transferor Company and the Transferee Company both belong to the same Group of Management. The Board of Directors of both the Companies have resolved to merge the Transferor Company into the Transferee Company for the purpose of achieving the economize of scale and to avoid unnecessary and unavoidable administrative and other expenses. It is further stated that after Amalgamation of the Transferor Company into the Transferee Company, there will be much more better utilisation of the resources and the assets and the properties of the Companies resulting into higher returns on capital.

3. The petitioners have earlier filed Company Application Nos. 18 & 19 of 2001. This Court has passed an order on 18.01.2001 whereby the Court has observed that all the Equity Shareholders have given their consent in writing approving the Scheme of Amalgamation and hence, the meetings of the Shareholders were dispensed with. Similarly, the Unsecured Creditors of the Transferor Company have given their consent in writing approving the Scheme of Amalgamation and hence, the meeting of the Unsecured Creditors was also dispensed with. There was no Secured Creditor of the Transferor Company and hence, the meeting was not required to be convened. Similarly, in the case of Transferee Company, the consent of Shareholders and Creditors were obtained in writing and their meetings were dispensed with.

4. After filing of the petition, this Court has issued notice on 26.02.2001 to the Regional Director, Department of Company Affairs to submit his report. Similarly, notice was also issued to the O.L. so far as the Transferor Company is concerned. The Court has further passed order regarding publication of notice in the Newspapers, namely, "Indian Express" - Ahmedabad Edition and "Phulchhab" - Rajkot Edition.

5. Pursuant to the aforesaid notice, advertisements appeared in the Newspaper and the petitioners have filed affidavit of publication along with relevant Newspapers cuttings on 12.03.2001. Pursuant to the said public notice, no objection was received either from any Shareholder or Creditors. So far as the notice issued to

the Regional Director is concerned, he has sent his communication dated 04.12.2002 to the Registrar of Companies and the Registrar of Companies has forwarded the said communication to the Senior Standing Counsel on 23.12.2002. The Senior Standing Counsel placed this communication on the record. The Regional Director has raised the following objections :-

1) That the companies have not filed audited balance sheet and profit and loss account as at 31.03.2001 and as it has not been possible to comment on the latest financial position of the aforesaid companies.

2) That according to balance sheet as at 31.3.2000, both companies have accepted loans which amounts to deposits from family members and relatives including firms. Consequent to the amendment of Section 3, it is possible that companies have contravened the provisions of Section 3 of the Companies Act, 1956.

3) That the authorised capital of the transferee Company is shown as Rs. 10 Lacs in para 9 of the Scheme while it is shown in the balance sheet as Rs. 1 Lac.

4) That in the petition filed by the transferee Company, it has been stated in page No. 6 para 11, that as the Company is a transferee Company, meeting of the Creditors was not required. It is seen that the Hon'ble Court vide order dated 18.01.2001 was pleased to only dispense with the meeting of the Shareholders of both companies and creditors of the Transferor Company. As such the meeting of the Creditors of transferee Company is mandatory to consider the Scheme.

6. With regard to these four objections, an affidavit is filed by the Company. With regard to the first objection, it is stated that both the Companies have filed the Audited Balance-sheets and profit and loss Accounts as on 31.03.2001. Therefore, nothing more is required to comment on the said aspect. However, for the ready reference, the copy of the Audited Balance and Profit and Loss Account as on 31.03.2001 was annexed along with the said affidavit.

7. With regard to the second objection about the acceptance of loans by the Companies which amounts to deposit from family members and relatives including

firms, it is stated that there is no contravention of Provision of amended Section 3 of Companies Act, 1956 as the date of Amalgamation prayed for is prior to the date of the amendment.

8. With regard to the third objection, it is stated that the Transferor Company has increased its share capital from Rs. 1 Lac to Rs. 10 Lacs on 23.10.2000. The Company has complied with all the legal requirements and filed Form No. 5 & Form No. 23 with the Registrar of Companies for sanctioning the Scheme. It is only because of this fact that the authorised share capital of Rs. 1 Lac was mentioned in the Balance sheet as on 31.03.2000 and the same was increased on 23.10.2000. Hence, this figure was mentioned in the Scheme of Amalgamation.

9. With regard to the fourth objection, it is stated that there is no outstanding amount to be payable in respect of any of the sundry creditors outstanding as on 31.03.2001. M/s. Shreenathji Buildwell Pvt. Limited i.e. Transferee Company has also filed its affidavit affirming that due to this amalgamation, their right or interest are not going to be affected in any manner. Even otherwise, the meeting of the Creditors of the Transferee Company is not mandatory and no compromise is sought for so far as the Creditors of the Transferee Company is concerned.

10. Mr. H.S. Tolia, learned advocate appearing for the petitioners has, therefore, submitted that all the four objections raised by the Regional Director have been duly explained and except these objections, there is no objection which prevents this Court from sanctioning the Scheme of Amalgamation.

11. So far as the Transferor Company is concerned, the O.L. has submitted his report on 09.01.2002 wherein he has stated that the Chartered Accountant appointed for the purpose of scrutiny and investigation of the Books of Accounts and affairs of the Company has submitted his report concluding that on the basis of the verification of the Books of Accounts and the affairs of the Company and on the basis of the information and according to the explanations given to him, the affairs of the Company have not been conducted in a manner prejudicial to the interest of its Members and/or to the public interest.

12. After having heard learned advocate appearing for both the Companies and after having gone through the Scheme of Amalgamation, Regional Director's objections

and the petitioners' reply thereto as well as the report of the O.L., this Court is of the view that there is no reason not to grant sanction to the Scheme of Amalgamation presented by the petitioners before this Court. The Court is further of the view that the Scheme is neither prejudicial to the interest of Shareholders or Creditors nor it is contrary to the public interest. Accordingly, the Court hereby grants its sanction to the Scheme of Amalgamation as per Annexure C.

13. The petitioner shall file the certified copy of this order with the Registrar of Companies within stipulated period. The cost to be paid to the learned Senior Central Government Standing Counsel is quantified at Rs. 3,500/- per petition and the same may be paid to Mr. Jitendra Malkan, learned Senior Central Government Standing Counsel.

14. With this directions and observations, both the petitions are accordingly disposed of.

[K.A. PUJ, J.]

#Savariya#

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